

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DANIEL MILLIMACI,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 06-135 Erie
	)	
MARILYN BROOKS,	)	
	)	
Respondent.	)	

**MEMORANDUM ORDER**

This habeas corpus action was received by the Clerk of Court on June 8, 2006, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 6], filed on August 23, 2006, recommended that Petitioner's Petition be dismissed as untimely and that a certificate of appealability be denied. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Petitioner by certified mail and on Respondent. Objections were filed by Petitioner on September 6, 2006 [Doc. No. 10]. After de novo review of the petition and documents in the case, together with the Report and Recommendation and objections thereto, the following order is entered:

AND NOW, this 12<sup>th</sup> day of October, 2006;

IT IS HEREBY ORDERED that the matter is REMANDED to the Magistrate Judge for the purpose of reconsidering Petitioner's alleged incapacity after supplementation of the record in a manner deemed appropriate by the Magistrate Judge.

s/ Sean J. McLaughlin  
United States District Judge

cm: All parties of record  
Susan Paradise Baxter, U.S. Magistrate Judge